

REMARKS

The Invention

In general, the invention features a method of treating or preventing cell death by administering a peptide that includes the sequence Val-Asp-Val.

Summary of the Office Action

Claims 1-23 are pending. Claims 20-23 stand withdrawn as being directed to nonelected subject matter. Claims 1-19 have been examined. The specification and claims 2, 3, and 16-18 are objected to. Claims 1, 12, 13, 18, and 19 stand rejected for lack of enablement. Claims 2, 3, and 12-19 stand rejected for indefiniteness. Claims 14, 18, and 19 stand rejected as being anticipated by Jacobi (U.S. Patent No. 4,011,142). Claims 1-3 and 12-19 stand rejected as being anticipated by Torrens Madrazo (U.S. Patent No. 6,309,873). Claims 1-3 and 12-19 stand rejected for obviousness over Gallus (Clin. Haematol. 15:509-559, 1986) or Podlasek (U.S. Patent No. 5,342,755) in view of Jackson (Biochemistry 21:6620-6625, 1982).

Summary of the Amendments

Claim 1 has been amended to incorporate the limitation of claim 11. Claim 3 has been amended to replace "has" with "consisting of." Claim 12 has been amended to correct a typographical error, and to remove reference to nonelected

subject matter. Claims 19 and 20 have been amended to depend from claim 1, rather than from claim 14 (now canceled).

Claim 11

Applicants note that while the summary of the Office action lists claim 11 as being rejected, the Examiner did not ascribe any rejection to this claim. Accordingly, claim 11 should not be listed as being rejected, but rather as being objected to for depending from a rejected claim.

Applicants have now amended claim 1 (the sole remaining independent claim) to recite the limitations of claim 11 (i.e., that the peptide is 3-20 amino acids in length). This amendment overcomes each of the rejections of claim 1, i.e., as lacking enablement, as being anticipated by Jacobi and Torrens Madrazo, and for obviousness over Gallus, Podlasek, and Jackson.

Rejections under 35 U.S.C. 112, second paragraph

Claims 2-3 and 12-19 are rejected as being indefinite. Applicants have met these rejections by amendment of claim 3, 12, and 19, and cancellation of claims 13-18, and these rejections may now be withdrawn.

Examiner's objections

Applicants have addressed the Examiner's objections to the specification by appropriate amendment. As for the Examiner's objection to claims 2 and 3,

applicants note that they intend to file a Petition to the Commissioner requesting reconsideration of the restriction requirement. During consideration of this petition, applicants wish to leave the matter that was subject to the restriction requirement in these two claims.

Restriction requirement

As mentioned above, applicants intend to file a Petition to the Commissioner requesting reconsideration of the restriction requirement. Specifically, applicants maintain their position that the peptide sequences of SEQ ID NOs: 1-8 could be examined without imposing an undue burden on the Examiner. Applicants also disagree with the Examiner's assertion that "cell death is not an intrinsic feature of the disease states rather a consequence of the disease." Applicants will petition to rejoin neurodegenerative disorders with cardiovascular diseases. Applicants moreover reserve the right to petition the Commissioner at a later date to rejoin the other nonelected diseases.

Miscellaneous items

Although the present amendments meet all of the rejections raised by the Examiner, applicants wish to bring two items to the Examiner's attention.

First, applicants direct the Examiner to the declaration of inventor Dr. Simon Rabkin, submitted on July 10, 2002. In rejecting some of the claims for lack of enablement, the Examiner did not indicate that this declaration had been

considered. This declaration summarizes a series of experiments performed by or under the direction of Dr. Rabkin and which further demonstrate the ability of VDV-containing peptides to ameliorate cell death in animal models for human diseases.

Second, applicants note that Torrens Madrazo was cited as § 102(b) prior art, but that the issue date of Torrens Madrazo was six years after applicants' priority date. Indeed, applicants' priority date precedes Torrens Madrazo's filing date by nearly four years. In short, Torrens Madrazo is not prior art under any part of § 102.

Cited references

Applicants respectfully request that the references cited on the Form PTO-1449 submitted on July 31, 2001 be considered and that the Form PTO-1449 be initialed and returned. Applicants also request that Torrens Madrazo and Podlasek, cited by the Examiner, be listed on a Form PTO-892 and that a copy be mailed to the undersigned.

Conclusion

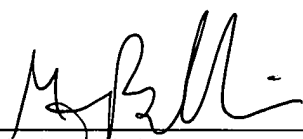
Applicants submit that the claims are now in condition for allowance. Should the Examiner deem that there are remaining issues, applicants request that the Examiner phone the undersigned so that these issues can be discussed. Enclosed is a petition to extend the period for submitting a reply in connection

with this case for three months, to and including July 30, 2003. If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: _____

7/3/03



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